BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF AN ALTERNATIVE MASTER PROGRAM OF STATEWIDE SIGNIFICANCE ADOPTED BY THE STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY FOR THE CITY OF MARYSVILLE,	
CITY OF MARYSVILLE, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, Respondent, ASSOCIATION OF WASHINGTON CITIES and EDWARD W. HAYES. Amici Curiae.	SHB No. 78-28 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

This matter, the appeal of certain Department of Ecology action with respect to the master program for the City of Marysville, came before the Shorelines Hearings Board, Dave J. Mooney, Chairman, Chris Smith, Robert E. Beaty, William A. Johnson, and David A. Akana (presiding), at a hearing

DAA/DO

in Marysville on November 6, 1978.

Appellant City of Marysville was represented by James H. Allendoerfer, its City Attorney; respondent Department of Ecology was represented by Robert V. Jensen, Assistant Attorney General. Also present was William W. Baker, attorney for Edward W. Hayes, and Christopher G. Lockwood, Assistant Director of the Association of Washington Cities, amici curiae.

Evidence and argument were offered, and the contentions of the parties were set forth.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Shorelines Hearings Board makes these

FINDINGS OF FACT

I

The instant appeal concerns the designation of a site as conservancy and the deletion of provision in the master program allowing waste disposal in the City of Marysville (City) shoreline areas, by the Department of Ecology (Department).

The site affected by the designation, as well as the waste disposal prohibition, is an area of about 80 acres located south and west of Ebey Slough and east of Interstate 5 on shorelines of state-wide significance in the City of Marysville. The site was farmed as early as 1919 and a house was located thereon. After the dikes fell into disrepair, farming was abandoned sometime in the early or mid 1950s. Highway construction fragmented the property during the two decades beginning 1950. The site lay as such up to the present time, a brackish marsh.

II

Edward Hayes owns the property subject to the actions of the Department of Ecology.[1] A substantial development permit was issued to him in 1973 to "operate a solid waste landfill and to continue to expand transshipping capabilities and heavy industrial use." (Exhibit S-A.) This Board entered a final decision which in effect vacated the permit and which decision was affirmed by the State Supreme Court on July 15, 1976. Present plans for the property within the diked area, which was formerly a farm, include filling the entire property with wood waste and concrete materials over a ten-year period. The filled area would then be made available for water-dependent activities. Hayes owns an area east of Interstate 5 presently used as a disposal area which is aesthetically displeasing.

III

According to the City Administrator, the site is in a commercial zone. Prior to annexation by the City, the County placed the site in a heavy industrial zone. When the City prepared its proposed master program, the site was given an urban environment designation. If placed in an urban environment designation, the site could have significant economic potential resulting in more jobs, provide an increased tax base for the City, and make available a convenient location with access to the water.

IV

On June 20, 1974, the Department of Ecology received from the City

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1. An earlier decision of this Board, attached hereto, describes the property and the prior proceedings in greater detail.

of Marysville a letter dated June 4, 1974 and its proposed master program. On July 10, 1974, the Department received a letter from the City's Mayor stating that on June 4, 1974 the City had transmitted to the Department a proposed shoreline management master program. The letter responded affirmatively to a request by the Department for confirmation that the City Council had duly considered the master program.

V

On September 18, 1974, the Director of the Department sent a letter to the Mayor rejecting the proposed master program based on grounds relating to the sections designating environments and regulating solid waste landfills. Attached to the letter were staff comments with specific recommendations that the area east of Interstate 5 be designated conservancy, and that solid waste disposal be prohibited throughout City shoreline areas.

VI

On December 17, 1974, the Mayor responded explaining that the City decided to enact the proposed master program as submitted, without the changes recommended by the Department.

On January 22, 1975, the Director of the Department sent a letter to the Mayor with a copy to its City Attorney, stating that the master program for Marysville was approved with two exceptions. These exceptions were the same ones set forth in the September 18th denial, i.e., the urban designation east of Interstate 5 and allowance of the placement of solid waste within shorelines. The letter advised the City that the final boundary of the urban designation would be determined following, among other things, the court proceedings then pending over the Hayes

permit. The City did not then attempt to require the Department to act further on the disputed proposed master program provisions.

On August 12, 1975, the Department incorporated the Marysville master program into the state master program by regulation (WAC 173-19-390 (9)). The copy of the Marysville master program filed with the Code Reviser contained the January 22, 1975 letter from the Department which set forth exceptions to the Department's approval:

> . . .
>
> This letter provides formal approval of your program, except for the Urban Environment Designation which applies to the entire wetland area south and west of Ebey Slough, and easterly of Interstate 5 and, those provisions which allow solid waste for landfill in the urban environment as a conditional use. . . The exact southeasterly extent of the Urban environment, (the boundary between the Urban and Rural environment) will be established and approved by the Department at such time as:
> . . . .

VII

On July 28, 1977, the Department received a letter from the City Attorney which acknowledged the exceptions to the master program approval and requested a final ruling on the City's shoreline master program as originally proposed.

On August 10, 1977, in response to the request, the Director of the Department informed the City, by letter, that it was adopting an alternative master program on the shorelines of state-wide significance within Marysville. That letter essentially identified the boundary between the urban and conservancy environments at Interstate 5 and struck from the program that provision allowing solid waste landfills.

VIII

On October 7, 1977, the Department filed a Notice of Intention to Amend WAC 173-19-390(9) and to incorporate the amended Marysville master program into the state master program. On October 18, the Department filed a Declaration of Non-Significance and an Environmental Checklist on the proposed rule.

On April 13, 1978, the Department filed with the Code Reviser a Notice of Intention to Adopt a Rule amending WAC 173-19-390(9) to adopt and approve the alternative City of Marysville master program. The notice included notice of a public hearing to be held on June 22, 1978 in Everett, and a proposed adoption proceeding on July 18, 1978 at the Department of Ecology in Olympia.

IX

On June 22, 1978, a public hearing was held by the Department on the proposed rule. Testimony and written evidence was taken from proponents and opponents of the proposed rule. Interested parties were allowed until July 10 to file any further written material relevent to the proposed rule. Concerns urging a more intense use of the site (see Finding of Fact III) were made by opponents, and proponents stated their concerns regarding the preservation of intertidal marsh areas, which have declined in quality in recent years, and the detrimental effects of estuary conversion on the waterfowl and salmon resources and production of food organisms. On July 18, 1978, the Department held its adoption proceedings at which additional testimony was heard from opponents of the proposed rule. Thereafter, the Director signed the order adopting the propcsed rule.

On July 26, 1978, the Department filed with the Code Reviser an order which adopted the alternative master program prepared by the Department. The City appealed the Department's action to this Board.

X

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

In appeals relating to a master program for "shorelines," the Board may declare such program invalid if it:

> (i) Is clearly erroneous in light of the policy of this chapter; or
> (ii) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or
> (iii) Is arbitrary and capricious; or
> (iv) Was developed without fully considering and evaluating all proposed master programs submitted to the department by the local government; or
> (v) Was not adopted in accordance with required procedures . . . .

RCW 90.58.180(4)(a).

A different provision for review applies to a master program for "shorelines of state-wide significance:"

> (b) In an appeal relating to a master program for shorelines of state-wide significance the board shall approve the master program adopted by the department unless a local government shall, by clear and convincing evidence and argument, persuade the board that the master program approved by the department is inconsistent with the policy of RCW 90.58.020 and the applicable guidelines.
> (c) In an appeal relating to rules, regulations, guidelines, master programs of state-wide significance, and designations, the standard of review provided in RCW 34.04.070 shall apply.

RCW 90.58.180(4). RCW 34.04.070 allows a rule to be invalidated if:

> . . . it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures.

The provisions of the Shoreline Management Act must be "liberally construed to give full effect to the objectives and purposes for which it was enacted." RCW 90.58.900.

II

The City contends that the Department violated the time requirements for adoption of alternative master programs provided in RCW 90.58.090(2). That provision requires the Department to ". . . suggest modifications to the local government within 90 days from receipt of the submission" of a master program relating to shorelines of state-wide significance. It was not proven that the Department did not act within 90 days of its actual receipt of the submission. But even if it did not act within the 90 day period, the Department's failure would not result in the approval or adoption of the submission. The Department can only adopt or approve master programs using certain statutory procedures. RCW 90.58.120(2); 90.58.140(2); 90.58.090. RCW 34.04.025; 34.04.027. Harvey v. County Commissioners, 90 Wn.2d 473 (1978).

III

RCW 90.58.090 allows the Department to adopt or approve segments of a submitted master program. As to segments of the master program relating to shorelines of state-wide significance, the Department has full authority, following review and evaluation of a submitted master program, to develop and adopt an alternative master program if the submitted program does not provide the optimum implementation of the

policy of the Act to satisfy state-wide interests. RCW 90.58.090(2).

In its letter of approval, the Department excepted portions of the submitted master program (see Finding of Fact VI). The letter was included in the documents comprising the master program which was filed with the Code Reviser. It is a necessary element of the approved master program to identify the proposal(s) approved by the Department. We conclude that the Department approved only a part of the Marysville master program and could adopt an alternative segment of the master program as provided in RCW 90.58.090(2). This alternative simply completed the Marysville master program. Consequently, we do not reach the issue raised by appellant and amicus curiae, Association of Washington Cities, i.e., whether the Department has jurisdiction to initiate and adopt an amendment to a local government's master program.

IV

The appearance of fairness doctrine is applied "to provide a due-process type standard for statutorily required hearings of a legislative body acting in a quasi-judicial capacity." Polygon Corporation v. Seattle, 90 Wn.2d 59, 67 (1978). It has never been applied to agency action under its rule-making authority.

V

The City does not object to the Department's deletion of its provision for sanitary landfill, but is adamant that solid waste disposal sites and landfills are a legitimate use of shorelines. Thus, it has appealed the deletion of a solid waste disposal provision in the alternative master program. WAC 173-16-060(14), which prohibits solid waste disposal in shorelines of the state, is dispositive of this issue,

however, as stated by the Supreme Court in Hayes v. Yount, 87 Wn.2d 280, 290 (1976):

> The second sentence of WAC 173-16-060(14)(c) expresses an administrative determination that sanitary landfills and solid waste fills pose such a great potential for adverse environmental consequences that they are not even to be considered compatible with shoreline areas. Such a conclusion is fully consistent with the policies set forth in RCW 90.58.020. The regulation does not prohibit all filling in shoreline areas. Rather, landfills, other than sanitary fills and fill materials other than solid waste may be allowed when water quality problems will not result.

VI

In this case, the Department has weighed the value of the site as a part of a larger estuary against the economic advantages to the City and the property owner as an industrial area and has made a determination that optimum implementation of the policy of the Act which would satisfy state-wide interests requires that the site should be in a conservancy environment designation. We have not been persuaded, in the manner prescribed by statute, to conclude otherwise.

VII

Appellant's remaining contentions were withdrawn or are without merit.

VIII

The Department's alternative master program for a segment of shorelines of state-wide significance in Marysville, which thereafter completed the City's master program, has not been shown to be inconsistent with the policy of RCW 90.58.020 and the applicable guidelines, or violative of RCW 34.04.070.

IX

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The action of the Department is affirmed and the City's appeal thereto is dismissed.

DONE at Lacey, Washington, this 19th day of December, 1978.

SHORELINES HEARINGS BOARD

DAVE J. MOONEY, Chairman

CHRIS SMITH, Member

ROBERT E. BEATY, Member

DAVID A. AKANA, Member

WILLIAM A. JOHNSON, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL DEVELOPMENT PERMIT ISSUED BY SNOHOMISH COUNTY TO EDWARD W. HAYES GEORGE YOUNT and STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY and SLADE GORTON, ATTORNEY GENERAL, Appellants, vs. SNOHOMISH COUNTY and EDWARD W. HAYES, Respondents.	SHB Nos. 108 and 112 FINAL FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

THESE MATTERS being consolidated requests for review to the issuance of a conditional shoreline management substantial development permit; having come on regularly for hearing before the Shorelines Hearings Board on the 6, 7 and 8th days of March, 1974, at Everett, Washington; and appellant, Washington State Department of Ecology and Attorney General, appearing through its attorney, Thomas C. Evans, Assistant Attorney Gener appellant, George Yount, appearing through his attorney, J. Grahame Bell; respondent, Snohomish County, appearing through Darrell Syferd, Deputy Prosecuting Attorney; and respondent, Edward W. Hayes, appearing through

his attorney, Bill Baker; and Board members present at the hearing being W. A. Gissberg (presiding), Mary Ellen McCaffree, Arden A. Olson and Robert F. Hintz; and the Board having considered the sworn testimony, exhibits, post-hearing arguments, records and files herein and having entered on the 24th day of April, 1974, its proposed Findings of Fact, Conclusions of Law and Order, and the Board having served said proposed Findings, Conclusions and Order upon all parties herein by certified mail, return receipt requested and twenty days having elapsed from said service; and

The Board having received no exceptions to said proposed Findings, Conclusions and Order; and the Board being fully advised in the premises; now therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed Findings of Fact, Conclusions of Law and Order, dated the 24th day of April, 1974, and incorporated by this reference herein and attached hereto as Exhibit A, are adopted and hereby entered as the Board's Final Findings of Fact, Conclusions of Law and Order herein.

DONE at Lacey, Washington, this 22nd day of May, 1974.

SHORELINES HEARINGS BOARD

MARY ELLEN McCAFFREE, Member

ARDEN A. OLSON, Member

ROBERT F. HINTZ, Member

W. A. GISSBERG, Member

BEFORE THE
SHORELINES HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF A SUBSTANTIAL DEVELOPMENT PERMIT ISSUED BY SNOHOMISH COUNTY TO EDWARD W. HAYES GEORGE YOUNT and STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY and SLADE GORTON, ATTORNEY GENERAL, Appellants, vs. SNOHOMISH COUNTY and EDWARD W. HAYES, Respondents.	SHB Nos. 108 and 112 FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

A hearing on the consolidated above-numbered requests for review to the issuance of a conditional shoreline management substantial development permit was held in Everett, Washington on March 6, 7 and 8, 1974 before Board members, W. A. Gissberg (presiding), Mary Ellen McCaffree, Arden A. Olson and Robert F. Hintz.

Appellants Washington State Department of Ecology and Attorney General appeared through Thomas C. Evans, Assistant Attorney General; appellant George Yount appeared through his attorney, J. Grahame Bell; Respondent Snohomish County appeared through Darrell Syferd, Deputy

EXHIBIT A

Prosecuting Attorney; respondent Edward W. Hayes appeared through his attorney Bill Baker.

Having heard the testimony and considered the exhibits and post-hearing arguments, and being fully advised, the Board makes and enters these

FINDINGS OF FACT

I.

That any Conclusion of Law hereinafter recited which should be deemed a Finding of Fact is hereby adopted as such.

II.

Edward W. Hayes and others own a combined unimproved land area (site) of 93 acres. On March 10, 1970 he applied for a permit under RCW 86.16 (flood control zones) to construct and maintain a "sanitary landfill" on the site. Shortly thereafter he was granted a flood control permit to construct and maintain a "solid waste disposal site" (App. Ex. 70). At least since then he has utilized a portion of the site for that purpose and has now filled ten acres to a nine foot elevation, using approximately 100,000 yards of solid waste in the process. Apparently only nonputrescible wastes have been placed upon the site and much of it consists of discarded wood products and debris resulting from construction demolition. That portion of the site east of Interstate Highway 5 used as a disposal area is an eyesore and can best be described in its present condition as having been esthetically molested.

III.

The site is located in Snohomish County between the northerly

city limits of Everett and the southerly city limits of Marysville; its northerly boundary is Ebey Slough; its southerly boundary is Steamboat Slough; its westerly boundary is the Tulalip Indian Reservation. The site is bisected by Interstate Highway 5, old Highway 99 and railroad trackage and right of way, all of which were respectively constructed on elevated fill. The materials for the freeway construction were obtained from a borrow pit which was located on that portion of the site westerly of I-5.

Dikes were constructed around three sides of the property at about 1891 to protect the site and other property from water inundation by tide and the waters of Ebey and Steamboat Sloughs. The site was farmed until around 1959 at which time a break in the Ebey Slough dike occurred. Since than a portion of the site is covered daily by the tide water flowing through the breaks in the dike. That flow of salt water has scoured a channel from Ebey Slough into the portion of the site lying easterly of I-5.

IV.

Ebey and Steamboat Sloughs are portions of the Snohomish River, tributary to Puget Sound, and are shorelines of state-wide significance. According to the 1966 study of the Corp of Army Engineers, the site is within the 50 year flood plain. A more recent study by the Corps, the results of which are only tentative and subject to revision, leads to a finding that the site is not within the flood plain but that it is subject only to tidal flooding. At any event, the flood water storage of the site is insignificant and the filling of the site would not significantly affect the flood plain water storage

capacity because the site is such a small part of the Snohomish River flood plain.

V.

Respondent applied for a substantial development permit on March 26, 1973. Simultaneously he filed his "environmental impact statement" (App. Ex. 55). His shoreline management application sought a permit for a solid waste landfill and "continue to expand transshipping capabilities and heavy industrial use." His publication of the notice of hearing on the application stated the proposed development to be a "marine industrial area". The "final environmental impact statement" (App. Ex. 57) describes the proposed permit to be for "landfilling, channel extension, two docks, dredging, a future railroad spur and construction of a steel fabrication facility". A site plan and vicinity map was included in the material filed by respondent with his application.

VI.

The county commissioners, after a public hearing, approved a shoreline management substantial development permit "for operation of a solid waste landfill and marine industrial area", with the condition that "only nonputrescible wastes. . . be allowed" in the landfill. That condition was not expressed upon the face of the permit but is found in the resolution approving the granting of the application for a permit. The planning staff and commission had recommended disapproval of the application, but their findings and recommendations were considered and rejected by the county commissioners.

VII.

The site has been zoned heavy industrial since 1962. Immediately north and across Ebey Slough from the site there are three lumber mills and a boat marina and other highly urbanized facilities. A large area westerly of the site is now being used as a solid waste sanitary landfill in which Seattle's garbage is being dumped. Easterly of the site and within the planning jurisdiction of Snohomish County, there is no other land in the Snohomish River estuary which has been zoned heavy industrial.

VIII.

A solid waste landfill containing only nonputrescible wastes can cause leachates. The subsoil of the site is relatively impermeable, thus causing any leachates to move horizontally. There is no evidence that leachates from this site would have a deleterious effect on the adjacent waters.

IX.

Studies and projections by experts prove only that there is a divergence of opinion as to the need for additional industrial sites.

X.

The hundreds of acres of land in the estuary of the Snohomish River constitutes a fragile ecosystem. About one-half; i.e., 46 acres, of the site is a salt water marsh habitat. The dike contains a muskrat habitat. Although a filling of the site would mean a loss of a portion of the total estuary, the ecological or environmental impact of a fill would be insignificant. However, the cumulative effect of other such developments would cause irreversible damage to the ecosystem of the estuary at some

unknown and unpredictable stage of development.

Wolf Bauer, recognized as an expert naturalist, engineer and geologist found that the area of the site which is located westerly of I-5 would be acceptable for a fill and industrial area, because that area has lost its appeal "environmentally." However, his opinion was that the 57 acres easterly of I-5 was beyond a natural planning boundary upon which further encroachment of the natural estuary conditic of the Snohomish River should not be allowed.

XI.

The site is not economically suitable for agricultural purposes anc such a land use is not a viable option. The development plan proposed for the site does provide for the retention of the natural esthetic qualities of the existing dikes, but that proposal, although salutory has not been made a condition of the permit.

XII.

The environmental impact statement does not consider the availability of alternate marine industrial sites.

XIII.

The substantial development permit was granted on September 10, 1973. As of that date, there had been no adoption of goals and policies or other elements of the master programs either by the Planninc Commission or the County Commissioners of Snohomish County for the shorelines therein. Thus, there was no ascertainable or recognizable master program as of the date of the issuance of the permit.

CONCLUSIONS OF LAW

I.

Any Finding of Fact, which should be deemed a Conclusion of Law is hereby adopted as such.

II.

The dispositive guideline in this case is that of the Department of Ecology found at WAC 173-16-060(14)(c). It provides:

> ". . .(c) Fill materials should be of such quality that it will not cause problems of water quality. Shoreline areas are not to be considered for sanitary landfills or the disposal of solid waste." (emphasis supplied)

RCW 70.95.030(9) provides:

> "'Solid waste' means all putrescible and nonputrescible solid and semisolid wastes including . . . industrial wastes, . . . demolition and construction wastes, . . . and discarded commodities."

We interpret the above guideline to mean and hold that it mandatorily prohibits the disposal of solid wastes within the shoreline areas.

III.

Not every landfill is prohibited by the guidelines, however. WAC 173-16-060(14) provides for and permits the approval of certain landfills which are of the type, location, design and effect therein described. We are concerned about establishing a precedent of allowing fills in that portion of the Snohomish River estuary which is within the planning jurisdiction of Snohomish County and at those places which would be an invasion of that part of the estuary easterly of I-5. However, the Order to be entered in this cause will not be precedence setting because

respondent's filling activity had lawfully commenced prior to the effective date of the Shoreline Management Act and had been lawfully continued for two years thereafter. The public generally, and responden specifically, is faced with a situation where, if a permit be not grante the site will continue to be an eyesore. However, the granting of a permit for a fill on a portion of the site, but not using solid waste as a fill material, would be in the public interest and consistent with the policy section of the Shoreline Management Act and the guidelines if designed and constructed in accordance with WAC 173-16-060(14). In the ultimate development of a portion of the site, when filled, priority should be for a water-dependent use.

IV.

RCW 90.58.020 states that "industrial and commercial development which are particularly dependent on their location on or use of the shorelines of the state" shall be given priority in those limited instances where "alterations of the natural conditions of the shorelines of the state" is allowed. Because the subject permit is too vague to ascertain, with the certainty required by this Board, what it authorizes we are unable to determine the issues of this case relating to water-dependency. It is our view that a water-dependent commerce or industry, to which priority should be given, is one which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. A water-related industry or commerce is one which is not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location.

V.

If local government issues a permit upon certain conditions, those conditions should appear on the permit itself or by reference stated therein and with the reference attached thereto. The failure of Snohomish County to issue permits in that form can only lead to further controversy and uncertainty not only to the public but to the permittee as well. The Board makes the same criticism of the subject matter of the permit. We are urged to find that the purpose and scope of the permit is to be found in the environmental impact statement. We refuse to do so. The permit itself should describe with particularity and certainty what is being authorized. The description on the subject permit as a "marine industrial area" does not meet our test when no further explanatory material is attached to or expressly made a part of the permit.

VI.

Our review of the question of whether the permit is consistent with the master program "so far as can be ascertained" (RCW 90.58.140 (a)(iii)) is necessarily limited to the status of the master program as of the date of the issuance of the permit by the local government. At that time Snohomish County's master program was not ascertainable.

VII.

The specific permit which is the subject matter of this review should be vacated, but a permit should be granted in accordance with the principles set forth herein.

ORDER

The permit is vacated and the matter is remanded to Snohomish

County for its reconsideration of the issuance of a permit which is in accordance with these Findings and Order and which is limited in area to only that part of the site which would cover over the existing solid waste landfill located easterly of I-5.

DATED this 24th day of April, 1974.

SHORELINES HEARINGS BOARD

MARY ELLEN McCAFFREE, Member

ARDEN A. OLSON, Member

ROBERT F. HINTZ, Member

Having personally written the Findings of Fact and Conclusions of Law, I agree and concur with them. I also concur with the Order, as far as it goes. However, I would allow respondent to also fill that area westerly of I-5.

W. A. GISSBERG, Member